

NATIONAL AFFAIRS

PARIZEAU'S LEGAL ARGUMENTS BACKFIRE

by Patrick J. Monahan

In the past few weeks, Jacques Parizeau has been trying to shift the debate over Quebec sovereignty into the legal arena.

First, he attempted to defuse the debate over the borders of a sovereign Quebec by invoking the authority of international law. Federal Indian affairs minister Ron Irwin had claimed that, in the event Quebec were to try to secede, aboriginals living in northern Quebec would have a right to remain in Canada. Parizeau responded by citing an opinion obtained by the Quebec National Assembly in 1992 from five international law experts. According to Parizeau, the legal opinion clearly stated that, under international law, the borders of an independent Quebec would be identical to Quebec's existing borders.

Parizeau also invoked the authority of the Canadian constitution in support of his claim that Quebec's borders would remain intact following a unilateral declaration of sovereignty by the Quebec National Assembly. Parizeau pointed to section 3 of the *Constitution Act, 1871*, which provides that no province can have its borders altered without that province's consent. He invited Prime Minister Chrétien to "read the constitution and abide by it."

INTERNATIONAL LAW CAN'T DEFUSE NATIVE ISSUE

There is a very basic reason why Parizeau cannot rely upon international law to negate any claims for self-determination on the part of aboriginal peoples. The reason is that, under international law, any claims of the province of Quebec to self-determination cannot rank ahead of any similar claims from the aboriginal peoples.

There is thus a symmetry between, on the one hand, the claims of Quebec against Canada and, on the other, the claims of the aboriginal peoples against Quebec. To the extent that Parizeau seeks to deny or negate the claims of the aboriginals against Canada, he must similarly deny or negate Quebec's own claims against Canada. Alternatively, to the extent that Parizeau claims for Quebec a right to unilaterally secede from Canada, he must similarly accord and recognize a claim on the part of aboriginal peoples to secede from Quebec.

This symmetry is illustrated by the 1992 opinion from the five international law experts upon which Parizeau placed such weight. It is true that the opinion from the jurists concluded that, on the assumption that Quebec had already attained sovereignty from Canada, aboriginal peoples would not have any right to interfere with Quebec's territorial integrity. But the legal opinion concluded that Quebec was in precisely the same situation vis-à-vis Canada. The jurists reasoned that, under international law principles, only 'colonial peoples' have a right to self-determination. Because *neither* Quebec nor the aboriginal peoples met this requirement, Quebec did not have a right to secede from Canada and the aboriginal peoples did not have a right to secede from Quebec.

What about approaching the issue from the other end — from the

assumption that Quebec does, in fact, possess a right to secede from Canada under international law principles? This was the approach taken by Professor Daniel Turp of the Université de Montreal in a 1992 study prepared for the C.D. Howe Institute. Turp concluded (contrary to the opinion of the five international law experts preferred by Jacques Parizeau) that Quebec does possess a right to self-determination under international law. But this conclusion led Turp inexorably to the view that aboriginal peoples in Quebec also have the right under international law to dispose of their territory as they saw fit. "By virtue of their right to self-determination," Turp concluded, "the native nations of Quebec could decide to attain sovereignty, to remain integrated with Canada, to stay with Quebec if it chooses to become sovereign, or to remain within Canada even if Quebec chooses sovereignty."

So much for international law resolving the borders issue in Mr. Parizeau's favour.

UNANIMOUS CONSENT REQUIRED UNDER CANADIAN LAW

What about the Canadian constitution, which Mr. Parizeau also invoked in order to rebut suggestions that the borders of an independent Quebec would be inviolable?

It is true that the provinces of Canada have their borders protected by the *Constitution Act, 1871*. But this is only part of the story. The constitution of Canada does not permit a province to unilaterally secede from the federation. Provincial secession would require a constitutional amendment, and would thus be governed by the amending formula set out in part V of the *Constitution Act, 1982*.

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Section 41 of the amending formula describes those constitutional amendments that require the unanimous consent of the provincial legislatures and the Parliament of Canada. Included in this list are constitutional amendments in relation to "the office of the Lieutenant Governor of a province."

Provincial secession would seem to fall clearly within this category. It would eliminate entirely the office of the lieutenant governor of the province of Quebec, since Quebec would no longer be subject to the authority of the British Crown. Therefore, the Canadian constitution would permit the secession of Quebec only with the consent of all the other provinces as well as the Senate and House of Commons. Each legislature and the two federal houses would have to pass identical resolutions approving the terms of secession.

PARIZEAU CAUGHT IN QUICKSAND ON BORDERS ISSUE

It's easy to understand Parizeau's motivation in attempting to invoke legal arguments in support of his claims about the borders of an independent Quebec. Parizeau needs to convince Quebecers that separation will be accomplished cleanly and painlessly. He also wants to create the impression that separation is inevitable. Who wants to be left off the bandwagon of history?

Yet all that his questionable references to legal authority have accomplished is to reveal just how complicated the issue of Quebec's borders would prove in the event that Quebec attempted to secede from Canada. The more Parizeau talks about the issue, the more unresolved it appears. And, despite the protestations from Quebec media

commentators that this kind of discussion helps the sovereignty cause, one suspects that the Quebec people will draw rather a different conclusion from this unfolding controversy.

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QUEBEC REPORT

THE WORST OF ENEMIES

by Alain Noël

IMPOSSIBLE TASK

Among political scientists interested in public opinion, the dominant impression is that the Parti Québécois will win the next election, but lose its referendum on sovereignty. Given current public opinion, the task at hand for sovereigntists seems almost impossible. They still have a chance; however, public opinion remains mobile and with the right conditions a winning majority could emerge at the decisive moment. Indeed, if what happened the week Lucien Bouchard went to Paris indicates what is to come should the Parti Québécois form a government, anything appears possible.

Reduced to the essential, the facts about Quebec public opinion are quite simple. Although a large number of voters remain undecided, the Parti Québécois leads the Liberals in public support and appears likely to take power in a fall election. The May budget presented by Finance Minister André Bourbeau did not reverse this trend. On the contrary, support for the Parti Québécois increased after it was presented. At the same time, support for sovereignty remains relatively stable, below the 50 percent threshold. If we assume that the Parti Québécois will win the next election, the key objective for sovereigntists will be to move public opinion on sovereignty.

CLUSTERS OF VOTERS

Experience teaches us that, however difficult, such an objective is